



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/975,756	10/10/2001	Yelena Loginova	967.061US1	2366
21186 7590 10/08/2010 SCHWEGMAN, LUNDBERG & WOESSNER, P.A. P.O. BOX 2938 MINNEAPOLIS, MN 55402				
EXAMINER				
HUI, SAN MING R				
ART UNIT		PAPER NUMBER		
1628				
NOTIFICATION DATE		DELIVERY MODE		
10/08/2010		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

uspto@slwip.com
request@slwip.com

Office Action Summary**Application No.**

09/975,756

Applicant(s)

LOGINOVA ET AL.

Examiner

San-ming Hui

Art Unit

1628

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 July 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3, 7, 9-12 and 14-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 7, 9-12 and 14-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SD-102)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date _____

DETAILED ACTION

Applicant's response filed 7/19/2010 has been entered.

Claims 1-3, 7, 9-12, and 14-30 are pending.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-3, 7, 9-12, and 14-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 5,653,969 ('969) in view of US 5,804,173 ('173) and EP 0 590 604 ('604), both '173 and '604 are of record.

'969 teaches a low residue, rinse-off hair care product, such as gel, containing copolymer of methyl methacrylate and ethyl acrylate (See col. 7, lines 44 and col.10, line 39). '969 teaches the A monomer unit can be present in a range of 50-85% and monomer B as 15-40% (See col. 6, second to last paragraph and col. 8, first

paragraph). Hydrocarbon such as isoparaffin is taught as useful as solvent (See col. 12, lines 9-14 for example). '969 also teaches that Ceteareth-20, dimethicone, isododecane can be used (See col. 25-28, Examples 3-10).

'969 does not expressly teach the surfactant as ethoxylated alcohol. '969 does not expressly teach the additional agent such as sunscreen is added into the low-residue hair product. '969 does not expressly teach the herein claimed ratio between the monomer unit of acrylate copolymer as 7.5-8.5 : 1.8-2.3.

'173 teaches a easy-off hair product that can incorporate the surfactant can be ethoxylated alcohols (See col. 25, lines 11-12). '173 teaches a mixture useful for cosmetic composition for hair and skin care comprising a copolymer and carriers. Carriers included isoparaffin and cyclomethicone. Solvents or carriers can be comprised in the hair care composition in a range of about 10-98% (See col. 15-16). '173 teaches the hair care products can be formulated into various known formulations such as gel (See col. 15-16). About 75% of isoparaffin and around 60% of cyclomethicone are used to dissolved the copolymer in examples 11 and 17, polymer-solvent mixtures. '173 also teaches the herein claimed surfactants such as Steareth-20 and Ceteareth-20 (See col.25, lines 15-26). '173 also teaches the copolymer formulation may be used as a component for gels, lotions, and sunscreen (See col. 15, lines 48-67, col. 19, lines48 – col. 20, line27). '173 also teaches such composition having an improved "wash-out" characteristics.

'604 teaches a hairspray product that employing co-polymer of alkyl acrylate (including ethyl acrylate) with alkyl methacrylate (including methyl methacrylate), in a ratio of about 7.5 to 2.5 (See page 2, lines 40-45).

It would have been obvious to one of ordinary skill in the art at the time of invention to employ the ethoxylated alcohol surfactant and sunscreen agent taught in '173 into the hair composition of '969. It would have been obvious to one of ordinary skill in the art at the time of invention to employ the herein claimed ratio of monomers in the hair product of '969.

One of ordinary skill in the art would have been motivated to employ the ethoxylated alcohol surfactant and sunscreen agent taught in '173 into the hair composition of '969. It is clear that both of the easily rinse-off hair products of '969 and '173 are similar. Therefore, the surfactant and the sunscreen agents useful for hair composition of '173 should also be useful for hair composition of '969 since the employment of these agents would not affect the rinse-off properties of the hair product of '969. One of ordinary skill in the art would have been motivated to formulate and employ the herein claimed copolymer with the herein claimed weight ratio as 7.5-8.5 : 1.8-2.3 since the optimization of result effect parameters (dosage range, dosing regimens) is obvious as being within the skill of the artisan, absent evidence to the contrary.

Response to Arguments

Applicant's arguments filed 7/19/2010 averring the cited prior art's failure to teach the herein claimed weight ratio of the monomers have been fully considered but they

are not persuasive. As discussed before in the previous office action, the herein claimed co-polymer has been used in various hair care products, such as gel, spray, lotion. Similar component ratio has been taught in the cited prior art. Therefore, possessing the teachings of the cited prior art, one of ordinary skill in the art would have been motivated to optimize the ratio of the monomers to arrive at the herein claimed invention, absent evidence to the contrary. No evidence is seen to be present herein. Furthermore, certain claims are actually not directed to any ratio. For example, claims 2, 3, 11, 12, 17, and 28 do not recite any ratio between the monomers. Accordingly, the rejection under 35 USC 103(a) is considered proper.

No claims are allowed.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to San-ming Hui whose telephone number is (571) 272-0626. The examiner can normally be reached on Mon - Fri from 9:00 to 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brandon Fetterolf can be reached on (571) 272-2919. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

San-ming Hui
Primary Examiner
Art Unit 1628

/San-ming Hui/
Primary Examiner, Art Unit 1628